IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5279 of 2006
With
CIVIL APPLICATION No. 15060 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
JASHIBEN BIJALBHAI BABARBHAI & 8 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MR VIBHUTI NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1 - 9.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 20.04.2006 of the Motor Accident Claims Tribunal (Aux.), 7th Fast Track Court, Nadiad in MACP No.639 of 1994 by which the Tribunal has awarded compensation of Rs.1,82,000/- with interest at the rate of 12% per annum.

2. On 21.01.1994, the deceased was driving a truck bearing registration No. GTK / 2001 from Vasad to Handia. When the deceased reached Sevalia bus stop, the truck driven by respondent No.1 (bearing registration No. GQG / 6885) and insured by the appellant – insurance Company went on wrong side and dashed with the truck being driven by the deceased with such impact that the truck being driven by the deceased landed into the drain and the deceased sustained serious

injuries and succumbed to them during treatment. The widowed mother aged 52 years and 4 children of the deceased including the minor sons filed the claim petition for compensation of Rs.3 lacs. The Tribunal held that the accident was caused by the negligence of both the drivers and determined their responsibility in the ratio of 75:25 of respondent No.1 and the deceased respectively.

Even after having held that the responsibility of respondent No.1 and the deceased was in the ratio of 75:25, the Tribunal did not reduce the amount by deducting 25% for the negligence of the deceased, but made the award of Rs.1,82,000/-.

3. On the question of quantum of compensation, the Tribunal did not accept the claimant's case that the deceased was employed as driver by Vithlani Hydraulic Line Works of Vasad and was drawing salary of Rs.2,500/- per month, merely, on the ground that there was no

documentary evidence produced by the claimants. The Tribunal ignored the fact that the deceased sustained serious injuries causing his death, when he was actually driving the truck. The Tribunal assessed the notional income of the deceased at Rs.15,000/- per annum and after deducting one-third amount thereof for the personal expenditure of the deceased, assessed the dependency benefit at Rs.10,000/- per annum. Since the deceased was aged 34 years on the date of the accident, the Tribunal applied multiplier of 17 and computed the compensation for loss of dependency benefit at Rs.1,70,000/-. Thereafter, the Tribunal awarded only Rs.10,000/- as the conventional amount for loss to the estate and Rs.2,000/- for funeral expenses and awarded interest at the rate of 12% per annum.

4. In this appeal, the only grievance made by the learned advocate for the insurance Company is against the rate of interest. It is submitted that the interest ought to have been awarded at

the rate of 7.5% per annum.

5. Having heard the learned advocate for the appellant, we find that the rate of interest awarded by the Tribunal appears to be on the higher side, ordinarily, interest should be awarded at the rate of 9% per annum as held by this Court in judgment dated 20.11.2006 in First Appeal No.2590 of 2006. The Tribunal has, however, made such under assessment of income and of the compensation for loss of dependency benefit that whatever higher amount is awarded by the Tribunal by way of higher rate of interest (12% per annum instead of 9% per annum), the same is more than offset by the lower amount of compensation awarded by the Tribunal for loss of dependency benefit and for loss to the estate. Even the apparent error committed by the Tribunal in not deducting 25% from the compensation computed on account of attributing 25% negligence on the deceased himself would not in the ultimate analysis disturb the award due to under

assessment of compensation by the Tribunal.

6. The very fact that the deceased met with an accident, while he was driving the truck was more than enough to any reasonable person to accept the claimant's case that the deceased was employed as a driver and was getting salary of Rs.2,500/- per month. The Tribunal was not at all justified in assessing the income of the deceased as mere notional income of Rs.15,000/- per annum. Even the Second Schedule to the Motor Vehicles Act, 1988 provides for notional income of Rs.15,000/- per annum in case of a non-earning person. In the facts and circumstances of the case, therefore, the under assessment of income of the deceased has resulted into a much lower amount being computed for loss of dependency benefit. Additionally, we find that even as per the decision of this Court in the case of Bhanuben P. Joshi V/s. KB Parmar, 1993(1) GLH 260, the amount of Rs.20,000/- is being awarded as conventional amount for loss to the estate.

The Tribunal has instead awarded an amount of Rs.10,000/- for loss to the estate.

7. Since the deceased was earning Rs.2,500/- per month on the date of accident, his prospective income could be considered at least at Rs.3,000/- per month. The dependency benefit would, therefore, come to Rs.2,000/- i.e. Rs.24,000/- per annum after deducting one-third for personal expenses of the deceased. Even after applying a multiplier of 13 years, the compensation for loss of dependency benefit would come to Rs.3,12,000/-. Adding thereto Rs.20,000/- for loss to the estate as per the decision of this Court in in the case of Bhanuben P. Joshi V/s. KB Parmar, 1993(1) GLH 260 and in the case of G.S.R.T.C. V/s. Suryakantaben D. Acharya 2001(2) GLR 1777 and Rs.5,000/- for funeral expenses, the total computation would come to Rs.3,37,000/-. Even deducting 25% therefrom on account of negligence of the deceased, the amount of compensation payable to the claimants would be

Rs.2,52,750/-.

Hence, the additional amount paid on account of higher rate of interest would be offset by the lower amount of compensation awarded by the Tribunal. In our view, therefore, the final award does not call for any interference. Thus, taking an overall view of the matter, we are of the view that even if the rate of interest is reduced from 12% per annum to 9% per annum, the award under challenge does not call for any interference, since the award is capable of being maintained considering gross under assessment of the income of the deceased adopted by the Tribunal. We may, however, not be treated to have approved the awarding of 12% interest. However, in the peculiar facts and circumstances of the case, as indicated hereinabove, the award does not call for any interference. The appeal is, therefore, summarily dismissed.

8. Since the appeal is dismissed, Civil Application for stay is also dismissed.

9. The amount deposited before this Court at the time of filing the appeal shall also be transmitted to the Tribunal within one month from today.

10. A copy of this judgment shall be circulated to the Presiding Officer of the Tribunal, who rendered the judgment under appeal and also to the learned Administrative Judge in-charge of the Motor Accident Claims Tribunal.

[M.S.SHAH,J.]

[AKIL KURESHI,J.]

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